

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Review Application No.445 of 2007

In

Writ Petition No.970 of 2007

The State of Maharashtra and others

...Petitioners

Versus

Yashwantrao Chavan Adhyapak

Vidyalaya,

Mangrulpir, Distt. Washim,

through its Principal.

...Respondent

Smt. B.H. Dangre, AGP for Petitioners.

Shri Firdos Mirza, Advocate for Respondent.

Coram : A.H. Joshi & R.C. Chavan, JJ.

Dated : 20th April, 2007

Oral Order (Per A.H. Joshi, J.) :

1. By this application, the petitioners - State of Maharashtra and other officers of State Government are seeking review of judgment and

order passed by this Court on 4-4-2004. The petitioner No.2 is the authority, who is supposed to conduct the entire affairs of admissions to D.Ed. and examinations.

2. The gist of application for review, as drawn by the petitioners in their synopsis, reads as follows :

- “(i) The Hon'ble Court erred in believing and placing the April, 2007 calculating working days to be 214 days, which is totally incorrect. The respondent failed to take into consideration that the month of May is in summer vacation and session comes to an end on 30-9-2007, therefore, the month October, could not be counted.
- (ii) The Hon'ble Court failed to consider the notification which made it clear that if the attendance of 180 days is not completed after giving permission the permission would be treated for the next ensuing academic year. Thus, the attendance of 180 days was held to be mandatory and compulsory.
- (iii) The Hon'ble Court failed to consider that the curriculum formulated by petitioner No.2 is systematic syllabus which stresses on the development of teaching skills in a systematic fashion and the said curriculum can not be compressed or reduced at the whims and fancies of the institution. The students completing education, will have to undergo the pattern formulated by petitioner no.2 and the Hon'ble Court erred in permitting respondent to complete the curriculum/syllabus within lesser time than 180 days.
- (iv) The respondent totally misled this Hon'ble Court by calculating 180 teaching days at desired conclusion,

and even if the students are supplied in the month of April, 2007 and they would be able to complete 180 days and appear for the examination which is scheduled to be held in the month of Oct./Nov. 2007. The Hon'ble Court erred in believing the stand taken by respondent and granted relief in favour of respondent allowing the writ petition."

3. The application has been opposed by original writ petitioner by filing affidavit-in-reply.

4. As is seen from the body of review petition, the entire thrust is placed on the aspect of completion of spell of 180-days, which is mandatory for completion of curriculum and that it is impossible in view of intervening summer vacation, and other holidays, weekly offs, etc. for the students to complete the instructions and course. It is further urged that the aspect of powers vested in respondent No.2 to condone the deficiency in attendance cannot be taken into account when in the beginning itself it is vivid that sufficient duration for completion of curriculum is not at all available.

5. The learned AGP for the petitioners placed reliance on the judgments in Medical Council of India v. Madhu Singh and others, reported in (2002) 2 SCC 258, and Mridul Dhar (Minor) and another v. Union of India

and others, reported in (2005) 2 SCC 87, in order to urge that in academic matters, it will not be proper to expect and insist to complete the entire curriculum in a shorter duration and that the course must commence at a particular time and any further admissions thereafter ought not to be granted.

6. The learned AGP further submitted that whenever the permission is received from the NCTE in the midst of April, the affiliation is to be granted in the next Academic Year, as in present case.

7. While opposing the application, apart from the legal grounds, the respondent urged on facts :

- (a) The respondent College is an institution already functioning and entire paraphernalia is ready and respondent is on its toes to commence the course, and delay is on account of lethargy and mala fides on the part of the petitioners.
- (b) The petitioners had counted the days available in April and May considering the loss of time due to delay in allotting the seats.

- (c) The College, which has entire infrastructure, would work during vacation.
- (d) The fourteen lessons to be conducted by the students can be comfortably completed.
- (e) Though the Academic Year had to commence in October, the last draw of admissions was still going on till first week of February. Thereafter, seventh round was held and process of admissions went on till end of April. As per the advertisement to be published by respondent No.2, the admission process was still going on for the State level seats.
- (f) How the State could blow hot and cold when the students for whom the admission process was still going on till mid-February could have at their hand clear 180 days and how the curriculum which would lagged behind due to delay in completion of process of admissions.
- (g) If the entire batch of the respondent-College commences before close of April, as calculated by the Court, they were bound to get more than 175 days.
- (h) Even if the students are allowed within ten days' time, the Management and all of its staff shall make every possible and sincere effort to see that the curriculum is

completed.

- (i) Further loss of time is not on account of the State and no one can be allowed to take advantage of his own wrong.
- (j) The application for review is aimed at denying the benefit of opportunity to the respondent, since all the petitioners were acting mala fide.
- (k) Even now the effort of the petitioners is to postpone the admissions till the next Academic Year.
- (l) The curriculum in Diploma of Education is not comparable with that of Medical Education.

8. We find that it would be really ideal if the ratio of the judgment of the Hon'ble Supreme Court in Madhu Singh's case is made applicable to the education pertaining to most of the faculties and it will be really ideal if it is done in relation to D.Ed. Course. However, the discipline in that event will have to be followed by the State itself. When in fact the State commences the process of admissions from October and allots the students till February or even beyond, how can the State take up a 'U-turn' and say that the process be completed before a deadline which has not been declared so far ? In future, if it would like, the State

Government shall ensure that beyond the particular deadline fixed for admissions, no admissions shall be done and we hope and expect the State to do it.

Further, the judgment in Madhu Singh's case would apply to stray admissions made after the academic session has began. Such admissions are to be obviously deprecated because such students, who are admitted in the middle of academic session would be placed at a disadvantage in being required to complete the curriculum in shorter duration and make up for the classes lost. Such will not be the case when an entire batch of students joins late, since in such a case, curriculum for the entire batch would be completed by utilizing the available time. We, therefore find that applicants/original petitioners' reliance on the judgment in Madhu Singh's case is misplaced, in the context of respondent demonstrating as to how the academic calendar of 180 days could be completed.

9. We find that the original writ petition was filed by the Management on 1-3-2007 in the background that its representation submitted in February latest by 26th had gone un-responded. This Court then passed order in Writ Petition issuing notices, etc. on 7-3-2007. The Government sought time and ultimately filed reply on 23-3-2007 and this

Court decided the case by judgment and order dated 4-4-2007. The judgment was ready on 6-4-2007. We find that in the Writ Petition, the Government had taken the same stand, which was disapproved by Hon'ble Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others, reported in 2006(3) SCALE 675. While dealing with the said petition, we did not give any importance to the allegations made by the petitioner that the Government was deliberately delaying in furnishing the list. We further find in para 7 of the Writ Petition that the petitioner had averred as follows :

“7. It is humbly submitted that, NCTE through its order dated 6.1.2007 has made it mandatory for the institutions to complete 180 teaching days as such before granting admission to the fresh candidates, so also clause 10.1. of D.Ed. admission rules 2006-07 provides for 210 working days for the 1st year D.Ed. course. The relevant extract of clause 10.1 of the admission rules 2006-07 is annexed herewith and marked as Annexure-G. From perusal of the advertisement dated 2.2.2007 (Annexure-C) it can be safely presumed that the mandatory period was available on 6.2.2007 i.e. after around more than 1 month from the date of application of the petitioner to the respondents. Even today there is ample time available as the exams are scheduled in the month of November, 2007. The petitioner is apprehending that either the respondents are deliberately killing the time or acting with mala fide intention to not to enable the petitioner institution to have one more division in the current academic session.”

These averments were not replied by the State in its affidavit-in-reply. What was done by the Management by filing rejoinder was giving a break-up of the information already furnished in para 7. Now in review application, the State is coming with all details. We find that if the situation has worsened, it is because of the delay on the part of the State.

10. On facts, there is no ground to recall or review our order. We, therefore, dismiss the review application.

Judge.

Judge.

PDL/-